

3 UNITED STATES OF AMERICA, }  
4 Government, } No. 08 CR 888  
5 vs. } Chicago, Illinois  
6 ROD BLAGOJEVICH, } July 22, 2010  
7 ROBERT BLAGOJEVICH, }  
8 Defendants. } 10:08 o'clock a.m.

VOLUME 29  
TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JAMES B. ZAGEL  
AND A JURY

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1           (The following proceedings were had out of  
2           the presence of the jury in open court:)

3           THE CLERK: 08 CR 888, United States versus  
4           Blagojevich.

:08AM

5           MS. HAMILTON: Good morning, Your Honor.

6           Carrie Hamilton and Reid Schar on behalf of  
7           the United States.

8           MR. SCHAR: Good morning, Judge.

9           MR. SOROSKY: Good morning, Your Honor.

:08AM

10           Sheldon Sorosky, Lauren  
11           Lauren Kaeseberg, Arron Goldstein on behalf of Rod  
12           Blagojevich.

13           MS. SCHROEDER: Good morning, Your Honor.

14           Cheryl Schroeder on behalf of Robert  
15           Blagojevich.

:08AM

16           THE COURT: We left off yesterday with  
17           discussion of a judgment of acquittal. I heard  
18           argument of counsel and I said certain things. This  
19           is the time for last words.

:09AM

20           MR. GOLDSTEIN: Your Honor, if I could just  
21           make a couple of points and then I'll let  
22           Ms. Kaeseberg talk.

:09AM

23           THE COURT: The reason you're here is so you  
24           can make a couple of points, you can make three if  
25           you wish, and the other lawyers can do so as well.

1                   MR. GOLDSTEIN: Thank you, Your Honor.

2                   Your Honor raised yesterday the whole issue  
3 of speech and whether this amounted to criminal  
4 activity, and I want to point Your Honor's attention  
5 to Change to Win, specifically that subject.

6                   Change to Win, as to that subject, there was  
7 absolutely no action whatsoever, no action  
8 whatsoever as to that Change to Win subject. You  
9 have discussions.

10                  And, specifically, if you look at the  
11 indictment, Count 23, Page 101, 10(b), and in the  
12 indictment it specifically says they had a  
13 conversation, Mr. Blagojevich and others, where they  
14 were discussing attempting to look into Change to  
15 win. This is so far afield from criminal conduct  
16 that it should not stand whatsoever.

17                  Now, I think there's a lot of other issues  
18 that are similar to that, but Change to Win is the  
19 perfect example. No action whatsoever was taken.  
20 There was a discussion and that's all it was.

21                  The other issue I'd like to address with Your  
22 Honor is the issue as to Mrs. Blagojevich's fees.  
23 And Your Honor made a very good point and asked the  
24 question of: well, even if she worked, were these  
25 fees possibly more than what she was entitled to.

1 And Your Honor's question is exactly the concern we  
2 have why that issue should go back to the jury.

3 There's been no expert testimony, no  
4 testimony whatsoever, that the amount of money she  
5 received was somehow not commensurate with the work  
6 that she performed. The only evidence we have is  
7 that there was work performed and she received fees.  
8 The jury now is going to basically have to make a  
9 calculation without any testimony whatsoever,  
10 without any evidence to guide them to say: well,  
11 are these fees appropriate for the work she did.  
12 That completely is not the calculation.

13 She worked, she received fees, that's a clear  
14 indication there was no bribery whatsoever. Even if  
15 we take a more liberal interpretation of bribery,  
16 that somehow there was no specific act that Tony  
17 Rezko paid these fees to Mrs. Blagojevich that she  
18 was trying to get, she was just somehow trying to  
19 get good will and that potentially can be bribery.  
20 The jury is going to make a calculation or is forced  
21 to make a calculation that those fees that she  
22 worked for, were they appropriate fees in the world  
23 of real estate. They have no guidance whatsoever  
24 when they deliberate whether that's the question or  
25 not.

1           The government has put on no evidence that  
2 these were somehow unfair amounts of fees, but they  
3 have provided evidence that she worked and she  
4 received money in exchange for that work, Your  
5 Honor.

:12AM

6           With that, I'll turn to Ms. Kaeseberg to  
7 finish up.

:12AM

8           MS. KAESEBERG: With respect to the rest of  
9 the counts in the indictment outside of the  
10 conspiracy allegations themselves, our memorandum is  
11 pretty detailed to as the counts, so we rest on the  
12 arguments made in our memorandum with respect to  
13 those counts.

:12AM

14           We have previously filed with Your Honor a  
15 motion to dismiss Count 24, the false statements  
16 count, and I believe you reserved ruling on that and  
17 so we would ask to renew that motion or ask for  
18 ruling on that motion. I have a few things I would  
19 like to just highlight from that motion.

:13AM

20           There's a significant problem with this  
21 count, which is that there's no transcript of what  
22 was said. Agent Murphy testified to an interview  
23 where he took notes and then took from his notes and  
24 transcribed a report, an FBI 302, from his  
25 recollection of what was said at the interview.

:13AM

1           To proceed on a prosecution for false  
2 statements, which is akin to perjury, and not know  
3 exactly what was said and what the verbatim words  
4 were is improper. It doesn't give the defendant  
5 proper notice. So there's problems there.

6           In addition, the words that are alleged to  
7 have been made false, to be knowingly false when  
8 they were made, are ambiguous words.

9           In our motion, we cited a case that says  
10 that:

11           ".... a fundamental ambiguity is not a  
12 phrase of the meaning about which an  
13 ordinary intellect would agree nor one  
14 which would reach a mutual understanding  
15 by a questioner and answerer unless it  
16 were defined at the time it was sought and  
17 offered as testimony ..."

18           The words that are alleged to have been made  
19 or are knowingly false were "had tried to maintain a  
20 firewall, "track." It's not up to the jury to  
21 determine what Rod Blagojevich meant by those words  
22 or what the definition of the words are.

23           In order for these statements to have been  
24 false, falsely made, it goes to how Rod Blagojevich  
25 defined those words at the time they were said, and

1 it's up to the questioner at the time that those  
2 statements were made to get to the bottom of what  
3 those words mean.

4 So for this count to go back to the jury is  
5 improper because it will be the jury deciding what  
6 he meant by those words, and that's up to the  
7 interviewer, the questioner, to make that  
8 determination that those statements actually were  
9 false. They weren't false and for it to go back to  
10 the jury would be improper.

11 Additionally, we detailed in the motion the  
12 materiality element. We don't believe that the  
13 government has proven that the evidence -- excuse  
14 me, that the statements were material to the  
15 investigation when taken in the context of the  
16 entire interview.

17 And we rest on our motion with respect to the  
18 rest of the arguments. Those are highlighted points  
19 that I wanted to make with regard to that.

20 The only other outstanding issue is that we  
21 previously filed a motion to dismiss on First  
22 Amendment in that the defendant has a First  
23 Amendment right to engage in political speech,  
24 political expression --

25 (Cellular phone interruption.)

:14AM

:15AM

:15AM

:15AM

:15AM

1           THE COURT: Stop for a second.

2           (Brief pause).

3           MS. KAESEBERG: The defendant has the right  
4 to engage in political speech, political expression,  
5 campaigning, fundraising for campaigns. We believe  
6 that all the government has shown is attempt to  
7 criminalize that process. Based on what we have on  
8 our previously filed motion, we would move to  
9 dismiss based on violation of the First Amendment.

:15AM       10           THE COURT: Free speech, Change to Win, the  
11 fees, and Count 24.

12           MS. HAMILTON: Just addressing those points,  
13 Your Honor?

14           THE COURT: Sure.

:16AM       15           MS. HAMILTON: First with respect to Change  
16 to Win, the idea that there was no action taken  
17 whatsoever is not true.

:16AM       18           There is testimony and also tapes that  
19 reflect that John Harris at Defendant Blagojevich's  
20 direction had a conversation with Doug Scofield  
21 about how much money Rod Blagojevich could possibly  
22 make from Change to Win. That was action taken to  
23 further the Change to Win plan.

24           In addition to that, the jury heard a tape  
25 between Defendant Rod Blagojevich and his wife in

1 which she is researching on the Internet how much a  
2 director at Change to Win currently make so that the  
3 two of them could inform themselves as to how much  
4 money they could possibly ask for.

:17AM

5 In that recording, Defendant Blagojevich  
6 makes clear that his intent is to ask for more than  
7 what is reflected in the research that she found.

:17AM

8 So those are just two examples of actions  
9 that were actually taken to support the Change to  
10 win plan.

:17AM

11 With respect to the fees to Mrs. Blagojevich,  
12 what the evidence actually is is that she received  
13 two commissions for doing absolutely nothing. There  
14 is nothing in the record to support her receiving  
15 two of those commissions.

:17AM

16 With respect to the \$12,000 she received  
17 monthly, what is in the record is that she actually  
18 did very little to no work to earn those \$12,000 a  
19 month.

:18AM

20 In addition, the circumstantial evidence of  
21 the timing of those payments is very important and  
22 very strong. What it shows is that the \$12,000  
23 payments start within days, within days of Tony  
24 Rezko's receipt of the funds from Bob Kjellander,  
25 and they end, again, within days of Mr. Levine being

1 approached by the FBI in connection with his  
2 criminal activities.

3 So to say that these somehow cannot be proof  
4 of a means and method of the charged enterprise is  
5 not consistent with the evidence that is being  
6 presented to this jury.

7 With respect to Count 24, the false  
8 statements count, the government does not need a  
9 transcript of the precise words that Defendant Rod  
10 Blagojevich made. The agent's testimony is more  
11 than sufficient for the jury to rely upon.

12 And, in fact, he wasn't actually challenged  
13 even on cross-examination as to the precise words  
14 that the defendant used and that he somehow got the  
15 words wrong.

16 The idea that defendant's words were  
17 ambiguous, also the jury can find there was nothing  
18 ambiguous about the defendant saying he tried to  
19 maintain a firewall, that was his words, a firewall  
20 between politics and government.

21 And, actually, the testimony from the agent  
22 was that there was follow-up with respect to what he  
23 meant with respect to politics and government. So  
24 the idea that the agent just didn't follow up and  
25 was ambiguous with respect to that statement is not

1 supported by the evidence in the record.

2           In addition, the second statement that he  
3 does not track or want to know who contributes to  
4 him or how much they're contributing, there's  
5 nothing ambiguous about that statement by the  
6 Defendant.

7           And the idea that these statements somehow  
8 have not been proven to be material as to the  
9 investigation, again the jury has Agent Murphy's  
10 testimony as to what the stage of the investigation  
11 was at that time. And what he testified about is  
12 that just before this, the FBI had received  
13 information they believed to be credible from Joseph  
14 Cari about conversations he had with Defendant  
15 Blagojevich himself and a series of conversations he  
16 had with Mr. Rezko, Mr. Kelly, and Mr. Levine, all  
17 of which supported the statement from Defendant  
18 Blagojevich and his interpretation of that statement  
19 with respect to the fact that there was actually a  
20 mixing going on of fundraising and government.

21           So the agent's testimony alone is sufficient  
22 for the jury to find that the materiality portion  
23 has been proven.

24           Finally, with respect to the fact that  
25 somehow defendant's statements are entirely

1 protected as political speech is really without  
2 merit.

3           Clearly, he can say whatever it is he wants  
4 to say whenever he wants to say it; that does not  
:20AM 5 make it protected. The fact that he is a politician  
6 does not somehow excuse the fact that he did say  
7 things, he did direct people to do things, and he  
8 was conspiring, scheming, and attempting to  
9 personally benefit from his office. Simply because  
:21AM 10 he talks a lot doesn't excuse that, it doesn't  
11 protect his words. So the First Amendment provides  
12 no defense for these charges.

13           THE COURT: Anybody have anything else?

14           MS. KAESEBERG: If I could just briefly  
:21AM 15 address just to clarify what Agent Murphy's  
16 testimony was regarding followup.

17           THE COURT: Sure.

18           MS. KAESEBERG: He did not testify that he  
19 followed up what Rod Blagojevich meant by politics.  
:21AM 20 What he testified to was that previously in the  
21 interview, that Rod Blagojevich had made a comment  
22 about Lon Monk attending a fundraiser and so that  
23 was political and that the agent marked his notes  
24 politics, equal sign, fundraising. So the agent,  
25 then, interpreted politics to mean fundraising, that

:22AM  
1 was the testimony of Agent Murphy. There was no  
2 followup and there was no attempt to clarify what  
3 was meant by firewall. And, you know, the jurors  
4 take into deliberations their common sense. The  
5 word "firewall" could mean different things to  
6 different people. What matters is what it meant to  
7 Rod Blagojevich on March 15, 2005, when he said it,  
8 and there's no evidence as to what he meant by that  
9 phrase. The FBI certainly could've clarified that  
10 at the interview and he didn't.

:22AM  
11 THE COURT: What I'm going to do now is, let  
12 me start with Count 24. Arguably, you could make a  
13 case with ambiguity with respect to the first  
14 statement, although it's not the argument you're  
15 actually making. The argument you're making is is  
16 that firewall is an ambiguous word and I don't think  
17 that carries the day.

:23AM  
18 I know there was an attempt here to inject a  
19 dictionary into trial. A lot of reasons why we  
20 don't allow that, not the least of which is is the  
21 authority of the dictionary is subject to some  
22 question. I don't think there's anything  
23 particularly ambiguous about "firewall." In fact, I  
24 think there's nothing ambiguous about "firewall."

:23AM  
25 I thought the ambiguity argument was going to

1 be he's tried to maintain a firewall between  
2 politics and government, and that could be true if  
3 you add to that "but he failed miserably at doing  
4 it," that possibly could be an ambiguity.

:23AM

5 But I do not think there's anything ambiguous  
6 about the second one, particularly the references to  
7 "does not track," "does not want to know."

:24AM

8 what I am willing to do so that we don't run  
9 into a particular problem here is the verdict form  
10 on Count 24, we'll ask the jury which, if either of  
11 those two clauses, or both, they found to be false.

12 with respect to the rest of the motion, I am  
13 unpersuaded by the Change to Win argument.

:24AM

14 with respect to the fees, there is  
15 circumstantial evidence that the fees were  
16 disproportionate to any work that was done. And I'm  
17 not too sure there's much evidence that any work was  
18 actually done. So I am unpersuaded by this motion.  
19 But what I am going to do what I customarily do with  
20 respect to motions of this sort, and that is I'm  
21 entering and continuing it.

:25AM

22 Sometimes my mind with respect to these  
23 motions has been changed by what happens in closing  
24 argument. And there's some cases in which the  
25 nature of the verdict a jury returns indicates that

:25AM

1 perhaps there was something that I did not perceive  
2 at first that would possibly affect my ruling. So  
3 it is entered and continued.

4 But I currently, with one exception with  
5 respect to the verdict form, am unpersuaded by the  
6 motion.

7 Anything further we have to do other than the  
8 instruction conference which we begin tomorrow?

9 MR. SCHAR: Judge, there were three tabs in  
10 the binder which were not published to the jury.

11 THE COURT: Right.

12 MR. SCHAR: So what we would ask is to go in  
13 and whatever Your Honor's preference is but to  
14 remove those calls that were never actually  
15 published. Obviously, we'll do it in the defense  
16 presence.

17 MR. GOLDSTEIN: Your Honor, we do object to  
18 removing those three tabs, specifically one of the  
19 tabs the government is proposing is tab 20.

20 THE COURT: That's in book 1?

21 MR. SCHAR: Yes.

22 MR. GOLDSTEIN: It is. And that is a  
23 November 5th call and that's between Rod Blagojevich  
24 and Mr. Greenlee. While it was not published as far  
25 as the audio was played, Mr. Greenlee was

1 cross-examined on that conversation with the jurors  
2 as we read through the transcript as Mr. Greenlee  
3 was cross-examined on that, that conversation.

4 My understanding is that there's no issue as  
5 to the foundational questions as far as being  
6 admitted into evidence as the agent certainly laid  
7 foundation as to the calls, the issue is whether it  
8 was published or not as to the audio. The  
9 transcript was certainly published in  
10 cross-examination with Mr. Greenlee. So we believe  
11 it should go back to the jury.

12 THE COURT: Published for what purpose in  
13 cross-examining Mr. Greenlee?

14 MR. GOLDSTEIN: Well, there was impeachment  
15 because Mr. Greenlee was questioned about the advice  
16 he gave and his opinions as to whether this can be  
17 done and then there was the whole situation of the  
18 legitimate ask discussion. There was also  
19 cross-examination about Mr. Greenlee's suggestions  
20 and involvement in this, and he was the one who  
21 suggested, for example I believe it was the energy  
22 secretary position, as well as other things. So  
23 there was impeachment, as well as the  
24 cross-examination of exactly Greenlee's involvement  
25 in this.

1           THE COURT: The impeachment is actually the  
2 only thing I'm interested in.

3           MR. GOLDSTEIN: I understand.

4           THE COURT: And the question is, what parts  
:28AM 5 of this did you front Mr. Greenlee on.

6           MR. GOLDSTEIN: On the legitimate ask.

7           THE COURT: No, what I mean is page and line  
8 numbers.

9           MR. GOLDSTEIN: I apologize.

:29AM 10          It is Page 6, and it starts right around line  
11 10, and then it ends about line 20.

12          THE COURT: Okay. So, for the record,  
13 Greenlee says:

14          ".... so I think, you know, Health and Human  
15 Services is really the one you want, you  
16 know that is."

17          "Blagojevich: Yeah."

18          "Greenlee: And that is the position."

19          "Blagojevich: They think I want, huh?"

:29AM 20          "Greenlee: And I think it's a totally  
21 legitimate ask."

22          "Blagojevich: What's that?"

23          "Greenlee: I said I think it's a totally  
24 legitimate ask."

25          That's the passage we're talking about?

1           MR. GOLDSTEIN: Correct, Your Honor.

2           THE COURT: And refresh my recollection as to  
3 how you used this with Greenlee?

4           Anyone can step in on this.

:30AM       5           MR. GOLDSTEIN: Mr. Greenlee was asked that  
6 he told whether or not he told Mr. Blagojevich  
7 whether this was legal to do, whether he could do  
8 this. My understanding is he denied that, and then  
9 he was impeached with this statement which was "I  
10 think it's a totally legitimate ask" and we  
11 obviously went through some discussion with what  
12 "legitimate" means. But "legitimate" is certainly  
13 impeaching of him telling him this is doable, wrong,  
14 right, or legal.

:30AM       15          So he was specifically impeached on to  
16 whether he, Mr. Greenlee, told Governor Blagojevich  
17 that this was doable, legal, whatever term you want  
18 to use, by saying twice, "I think it's a totally  
19 legitimate ask."

:30AM       20          THE COURT: Okay, what's the other passage?

21          MR. GOLDSTEIN: As far as impeachment, there  
22 are no other passages that are specifically  
23 impeachment on this tab.

24          Quickly, the other two tabs we are requesting  
25 to come in. It's not necessarily impeachment, Your

1 Honor, it would be more as far as completeness.

2 MR. SCHAR: Judge, the call was played and  
3 the whole transcript was actually never published.  
4 what Mr. Goldstein did is, as he did with a variety  
5 of other conversations, I think some of which were  
6 not in evidence, he confronted or asked Mr. Greenlee  
7 about it. This would have to be in the binder  
8 books. And Mr. Greenlee answered the questions.

9 :31AM If he wants to prove-up impeachment through  
10 the use of this phone call, they had their  
11 opportunity in their case-in-chief to prove up  
12 impeachment. So this was really nothing more than a  
13 demonstrative, and it was not published in any  
14 particular way to the jury in whole.

15 :31AM And so it would be very misleading to send it  
16 back where only a certain portion of it was asked  
17 about, the call wasn't played and the entire  
18 transcript was not published.

19 :32AM Besides that, "legitimate ask" I don't think  
20 was impeachment, but that issue aside, I don't think  
21 it proves the point. But, nonetheless, it's  
22 misleading as to how the jurors would have it back  
23 there with them.

24 :32AM MR. GOLDSTEIN: Your Honor, as to proving up  
25 the impeachment, the impeachment was proved up

1 because Mr. Greenlee acknowledged that he said those  
2 things.

3 THE COURT: Right. Which is what the  
4 government's argument is.

:32AM

5 MR. GOLDSTEIN: But it's therefore in  
6 evidence based on his proving it up --

7 THE COURT: No, what's in evidence is his  
8 statement that this is what he said, that is it's a  
9 totally legitimate ask. He said it.

:32AM

10 MR. GOLDSTEIN: No, I understand that. And  
11 given the fact that the jurors had that binder, they  
12 read that portion of it, I mean, in essence while it  
13 wasn't published as far as an audio, it was  
14 published to the jurors that they were reading along  
15 the binder, which there was no objection to.

:32AM

16 THE COURT: We're counting on the jury's  
17 memory for this one, not this. And, in all honesty,  
18 you're probably better off without it because it's  
19 quite clear the whole thing is this is political and  
20 not legal advice. I don't think you're harm.

:33AM

21 what are the other tabs?

22 MR. SCHAR: 52 and 53.

23 THE COURT: Which ones?

24 MR. SCHAR: 53 and 53.

:33AM

25 THE COURT: I need another book for it.

1 (Brief pause).

2 THE COURT: 52 is the November 12th, 2008,  
3 Rod Blagojevich and Bill Quinlan.

4 MR. SCHAR: Right.

: 33AM

5 MR. GOLDSTEIN: Correct, Your Honor.

6 MR. SCHAR: Never played, Judge, never  
7 published. No testimony about the call.

:33AM

8           MR. GOLDSTEIN: Your Honor, the reason why we  
9 requested this tab go back with the jury is more of  
10 a completeness argument. This is a conversation in  
11 which the legal, personal, political discussion  
12 originates. It is tab 54 which was published to the  
13 jury that that was then recited to Mr. Harris.

• 34 AM

14 So for completeness reasons, we ask again  
15 there is no issue as to foundation, that this tab  
16 come in.

17 THE COURT: what does it complete?

• 34 AM

18 MR. GOLDSTEIN: Well, it explains the -- it  
19 completes the thought as well as explains where the  
20 legal, personal, political comes from.

:34AM

21 THE COURT: Usually when you say  
22 "completeness" it means that somebody played part of  
23 this particular conversation, eliminated this, and  
24 you want it for completeness.

25 The completeness doctrine doesn't usually

1 apply to a situation in which somebody said  
2 something on another day at another time and you  
3 want to complete the thought with something on a  
4 different day.

:34AM

5 MR. GOLDSTEIN: Well, it is the same day.

6 THE COURT: Same time, same conversation?

7 MR. GOLDSTEIN: Not same time and not same  
8 conversation.

:35AM

9 THE COURT: Then I don't think the  
10 completeness doctrine applies. what I think you  
11 want to do here is you want to get in the direct  
12 testimony of your client that what was in his mind  
13 was, and I quote:

:35AM

14 "... my family, so the, when you put the  
15 level of the order priority the decision  
16 should be legal, what's in our best legal  
17 position to protect, to protect us."

18 "Right."

:35AM

19 "Personal second, third political. You  
20 like that, ah, order of priorities."

21 And this goes in and he's not cross-examined  
22 on it? No.

23 what's next?

24 MR. SCHAR: The next tab 53.

:35AM

25 THE COURT: Okay, what part of this one?

1           MR. SCHAR: That wasn't played.

2           THE COURT: Anymore part that he's interested  
3 in?

4           Is this Johnston, Niraj Shah, Krozel.

5           :36AM MR. GOLDSTEIN: Correct. Your Honor, this  
6 was not played, this was not published, and was not  
7 impeached on; nonetheless, it is again as to the  
8 state of mind and the completeness as to the issue  
9 of Johnston, as well as Krozel, if there is a  
10 discussion between Robert and Rod discussing  
11 fundraising, this completes the thought as to the  
12 Johnston issue. And I agree, it is not the same  
13 conversation, but it completes the constant thought,  
14 as Your Honor knows, of Rod Blagojevich from  
15 day-to-day and from time to time.

16           :36AM THE COURT: Okay. This is the same ruling.  
17 This is basically trying to get the direct testimony  
18 of a witness in without confrontation and I don't  
19 think state of mind applies to this for reasons for  
20 which I've gone into exhaustively on other  
21 occasions.

22           Anything else?

23           :37AM MS. SCHROEDER: Judge, I believe Mr. Ettlinger  
24 made an oral motion for Rule 29 motion in reference  
25 to Robert Blagojevich.

1           THE COURT: Entered and continued.

2           MS. SCHROEDER: Thank you, Judge.

3           THE COURT: Anything else to do today?

4           You had something?

5           MR. GOLDSTEIN: There is one very brief as  
6 far as scheduling and timing of closing.

7           THE COURT: I actually do.

8           If all goes well, we will be ready to have  
9 closing argument on Monday. And I think given the  
10 fact that we have enough time for an instruction  
11 conference tomorrow, although there is some aspect  
12 of that that we might have to move it a little, I'm  
13 talking now during the day, but I don't know yet and  
14 I'll tell you when we do if we have to.

15           My major concern is time and the issue is is  
16 how much time each side wants. And, ordinarily, I  
17 start with the prosecution and then I ask the  
18 defense, but in this particular case I think I would  
19 start with the defense. And I'm starting by asking  
20 first who is going to close for the defendant Rod  
21 Blagojevich.

22           MR. GOLDSTEIN: That would be Sam Adam, Jr.

23           THE COURT: Okay. And I note from my  
24 experience in the opening statement and perhaps even  
25 from some of the examination, that Sam Adam, Jr., is

:37AM

:37AM

:38AM

:38AM

:38AM

:39AM  
1 a big believer in the force of repetition. And  
2 while I can stop to some extent repetitious  
3 questioning, I do appreciate that one of the  
4 principle techniques a lawyer has in closing  
5 argument is repetition. So there's obviously going  
6 to be more repetition allowed in the closing than  
7 would be allowed in other phases of the trial.

8 MR. SOROSKY: Thank you.

:39AM  
9 THE COURT: And since I know that Sam Adam,  
10 Jr., is a practitioner of the repetition style, I'd  
11 like to have some idea of how much time he thinks he  
12 would like to take.

13 MR. GOLDSTEIN: we're looking at the ballpark  
14 of two and a half hours, Your Honor.

:39AM  
15 THE COURT: You're sure it's that small a  
16 period of time?

17 MR. GOLDSTEIN: Well, if Your Honor would  
18 like more, we certainly can accommodate.

19 THE COURT: No, no.

:40AM  
20 MR. GOLDSTEIN: I will remind Your Honor that  
21 Mr. Adam's opening was an hour and fifteen minutes.

22 THE COURT: Right. which was fine. But two  
23 and a half hours is within the realm of reasoning.

24 MS. SCHROEDER: Michael Ettinger would be  
25 doing the closing argument for Robert Blagojevich

1 and my guess would be an hour but I would like to  
2 defer to him before I give the Court a specific  
3 time.

4 THE COURT: Okay. Is he going to argue  
5 before or after the codefendant?

6 MS. SCHROEDER: Before.

7 THE COURT: Now the government.

8 MR. SCHAR: Judge, Mr. Niewoehner would be  
9 giving the opening close for the government, which  
10 he is working on as we speak. I would estimate it  
11 would be in the two hour range, but perhaps a little  
12 bit longer. He is still in the process of putting  
13 it together and certainly would be refined over the  
14 weekend. But that would be the estimate, probably  
15 between two, two and a half hours. I will be  
16 providing the final argument and I would estimate it  
17 between an hour to an hour and a half.

18 THE COURT: My belief is we can accomplish  
19 this in one day, which is my principal concern.  
20 We'll start in the morning. It is possible people  
21 run over, and maybe they won't because these are  
22 fairly long periods of time and lawyers do  
23 occasional get weary and don't use all of their  
24 time.

25 The only issue for me is, when I will begin

1 instructions. But as long as I get the argument in  
2 in one day, I'm fine, because I can give the  
3 instructions the next day if people look like  
4 they're dragging.

:42AM

5 So I think we're okay, and we can maybe  
6 finalize some of this stuff tomorrow and we'll see  
7 where we are. But we're okay. This is not going to  
8 be a problem for anybody.

9 Anything else?

:42AM

10 MR. SCHAR: Judge, just in planning ahead.  
11 And we'll talk about it again tomorrow, but for some  
12 reason if we get to 4:15, 4:30, it might be  
13 difficult for me to finish in that period of time  
14 with the jury staying later, perhaps I want to start  
15 in the morning. I guess we'll play that by ear.

:42AM

16 THE COURT: Yeah, we'll see. We'll see.

17 MR. SOROSKY: Well, I think we'll cross that  
18 bridge when we come to it.

:43AM

19 THE COURT: The one thing about jury  
20 arguments is that even if a jury sits there for a  
21 few hours and they would rather not sit there for a  
22 few hours, they want to hear the whole argument.  
23 It's one of those few times in a trial where the  
24 jury, if given their druthers, would stay longer  
25 than they would ordinarily in any other case. It's

:43AM

1 the final act. So I'm not too concerned about that.  
2 And the instructions which might take some time to  
3 read, my guess is, I would likely do that on the  
4 following day. And I would like to do that the  
:43AM  
5 following day even if people went through this more  
6 quickly and we wound up with closing arguments being  
7 over, say, at 4:15, I still probably would put  
8 instructions over to the next day partly because I  
9 generally don't think it's a good idea everything is  
10 concluded on day one and the jury goes home and not  
11 have something in court the next day. So I think  
12 we're okay.

13 And if we're not okay, I'll think of  
14 something. Anything else?

15 MS. SCHROEDER: What time tomorrow, Judge?

16 THE COURT: I think I said 9:00 but I think  
17 we're going to start at 9:30 instead.

18

19 (which concluded the proceedings had on  
20 this date in the above entitled cause.)

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7 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT  
8 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED  
9 MATTER

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/s/Blanca I. Lara

date

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Blanca I. Lara

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Date

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